

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.952 OF 2004

Standard Chemicals Co. Pvt. Ltd.

..Petitioner.

Vs.

V. Y. Kubal

..Respondent.

....

Mr. Rajesh Gehani for the Petitioner.

Mr. N.M. Ganguli for the Respondent.

...

CORAM: DR. D.Y. CHANDRACHUD, J.

27th September, 2006.

P.C. :

1. The Respondent was employed with the Petitioner as a clerk on 9th June, 1984. The Respondent came to be retrenched on 15th April, 1989. The Respondent instituted complaint (ULP) 157 of 1989 before the Labour Court under items 1 (b), (d), (f) and (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Labour Court allowed the complaint on 6th February, 2001 and granted reinstatement with continuity of service and full backwages. In compliance with the order of the Labour Court the Respondent was reinstated in March 2001. The revision filed by

the employer was dismissed by the Industrial Court on 11th November, 2003. During the pendency of the present proceedings, the Respondent retired from service on 15th July, 2006 upon attaining the age of superannuation. The order of the Labour Court which was confirmed in revision by the Industrial Court has been called into question in these proceedings under Article 226.

2. The workman stepped into the witness box and deposed that he was doing the work of a clerical nature for the employer. The duties which were being performed by the workman included maintaining registers for ESIC, Provident Fund and leave. The workman stated that occasionally he was doing other work in relation to invoices, delivery orders and bills. According to the workman, there were three other clerks viz. T. V. Chacko, B. P. Unnittan and G.D. Nautiyal. G.D. Nautiyal was working as a sales representative. According to the workman, the other two workmen were his juniors and though the management had stated that they were working as accountants, they were in fact employed as clerks. On behalf of the management, the principal witness was the managing director Raghuveer Prasad Singhania who sought to

establish that there were three employees who were looking after the accounts work. The management's witness produced a seniority list dated 1st April, 1989. He also sought to rely upon three appointment letters for the aforesaid employees. However, in the course of his cross examination, he admitted that he was unaware of the individual work which the members of the staff were doing; that the seniority list did not bear his signature and that he had not signed the three appointment letters which were referred to in his examination-in-chief. Another witness who deposited on behalf of the management was G.D. Nautiyal. In the course of his cross examination, the witness who claimed to be working as a sales representative admitted that no date had been put by any employee while signing on the seniority list. All the employees had signed on the list on 1st April, 1989 which the witness admitted was a holiday. The witness also admitted that none of the employees was present on that date. The witness was unable to state as to when the seniority list was displayed. On the basis of the material on the record, the Labour Court has justifiably come to the conclusion that the management has failed to establish its defence that the two other employees, T.V. Chaco and B.P. Unnittan who were junior to the Respondent were in fact working as accountants.

It must be noted that the office establishment was a small establishment consisting only of nine persons. The management's principal witness conceded that he had not signed the appointment letters of the three employees, nor had he signed the seniority list. The evidence of the principal witness for the management was therefore liable to be discarded. G.D. Nautiyal who was the sales representative made several admissions in the course of his cross examination which show that the seniority list was a fabricated document. Admittedly, no date was placed thereon by any employee while signing the seniority list. The witness volunteered that all the employees had placed their signatures on the same day viz. 1st April, 1989 but he had to concede that the aforesaid day was a holiday when no employee was present. In these circumstances, the finding of fact that has been arrived at by the Labour Court would not warrant interference in proceedings under Article 226 of the Constitution. The retrenchment in the present case was clearly unlawful.

3. During the course of the hearing of the present proceedings, learned counsel appearing for the contesting parties made several attempts to resolve the dispute. The dispute,

however, could not be resolved. As already noted earlier, the Respondent was reinstated in service in March 2001 and continued to work thereafter for a period of five years until he attained the age of superannuation in July 2006. The last drawn salary of the Respondent on the date of his reinstatement was Rs.2,316/- while, the salary on the date of his retirement was Rs.3,005/-. Counsel appearing on behalf of the employer has offered in these circumstances, a total payment of Rs.2.50 lacs in settlement of the claim of the Respondent towards arrears of backwages. The difference between the parties appears to be narrow, since the claim of the Respondent workman was that the total backwages would work out to Rs.2.95 lacs. Though the workman declined to accept the offer of settlement, learned counsel for the employer stated in fairness that his client would abide by the offer, should the Court find the amount of Rs.2.50 lacs a reasonable amount of compensation towards arrears. In my view, having regard to the last drawn wages, the fact that the workman was reinstated in service in March 2001 and continued to work thereafter for a period of five years until he attained the age of superannuation, the ends of justice would be met if a direction is issued to the employer to pay an amount of Rs.2.50 lacs towards the arrears of backwages.

Counsel appearing for the Petitioner has agreed to this and stated before the Court that a cheque in the amount of Rs.50,000/- towards the first installment is ready and can be handed over to the workman. He, however, prayed that a period of three months should be granted to make the balance payment in equal installments at the end of 45 days. Counsel appearing for the workman on instructions stated that the workman has refused to accept the payment of Rs.2.50 lacs, and the first installment offered. In view of the fair stand taken before the Court by the learned counsel for the employer, the request for the grant of time to pay the arrears can be allowed. Counsel also stated that time is sought on grounds of financial stringency. In a recent judgment of the Supreme Court in **UPSRTC Ltd. v. Sarada Prasad Misra** (Civil Appeal 2024 of 2006, decided on 13th April, 2006) Hon'ble Mr. Justice C.K. Thakkar speaking for the Bench held that payment of backwages is a discretionary power which has to be exercised keeping in view the facts and circumstances of each case and neither can a straight jacketed formula be evolved, nor can a rule of universal application be adopted. The Supreme Court, in para 10 of the judgment has adverted to the line of authority since the year 2001. The workman in the present case had put in about five

years' of service. In the aforesaid decision, the Supreme Court held thus :

“There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate.”

In the circumstances, the Petition is disposed of by issuing a direction to the effect that the Petitioner shall pay to the Respondent a lump sum amount of [Rs.2.50](#) lacs in final settlement of the claim for backwages within a period of three months from today. The workman would be entitled to a spread over for the purposes of Income Tax to the extent it is admissible in law. The Petition is accordingly disposed of.